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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT COLEMAN SCHMIDT,

Defendant and Appellant.

E049834

(Super.Ct.No. FWV900047)

OPINION

APPEAL from the Superior Court of San Bernardino County. Mary E. Fuller,
Judge. Affirmed.

Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Robert Coleman Schmidt appeals from a guilty plea to one count of receiving stolen property (Pen. Code, § 496, subd. (a))¹ and three counts of grand theft of personal property (§ 487, subd. (a)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A felony complaint was filed against defendant on January 8, 2009. The complaint was based on incidents that occurred on or about October 22, 2008, through January 5, 2009. A preliminary hearing was held on February 19, 2009. Several witnesses, including defendant's mother and several of her neighbors, offered testimony implicating defendant in three separate residential burglaries, and the theft and/or possession of a number of items that belonged to the neighbors. A police detective also testified about the results of his investigation into these matters.

Following the preliminary hearing, defendant was charged in a first amended information with three counts of first degree residential burglary (§ 459) and one count of receiving stolen property (§ 496, subd. (a)) (counts 1-4). This information alleged the events leading to the charges occurred on or about October 22, 2008. It was further alleged defendant had four prior strike convictions (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and had served one prior prison term (§ 667.5, subd. (b)).

A jury trial commenced on September 14, 2009. On September 29, 2009, after five days of trial and the testimony of 10 different witnesses, a second amended information was filed adding three additional counts alleging grand theft of personal

¹ All further statutory references are to the Penal Code.

property. (§ 487, subd. (a), counts 5-7.) The prosecutor stated he submitted the second amended information so it “would conform with the terms of the plea bargain we’re asking the Court to accept.”

Pursuant to a written plea agreement, defendant pled guilty to count 4, receiving stolen property, and to the three new charges of grand theft of personal property (counts 5-7). Defendant also admitted one of the four prior strike allegations, as well as the prior prison term allegation. The court accepted the ongoing trial testimony as a factual basis for the plea.

The court followed the plea agreement by sentencing defendant to the agreed term of 11 years in state prison. To reach the total term, the court imposed the aggravated term of three years on count 4, doubled to six years as a result of the prior strike. On each of counts 5 through 7, the court imposed one-third the middle term of two years eight months, doubled to 16 months as a result of the prior strike, all to be served consecutively to the term on count 4. Lastly, the court imposed a consecutive one-year term on the prior prison term enhancement. All other counts and allegations were dismissed and stricken pursuant to the plea agreement.

DISCUSSION

On December 2, 2009, defendant filed a notice of appeal “based on the sentence or other matters occurring after the plea.” In his notice, he also indicated his appeal was based on the trial court’s exclusion of defense evidence. Defendant requested a certificate of probable cause under section 1237.5 to challenge the validity of his guilty plea but the trial court denied the request. We appointed counsel to represent defendant

on appeal. Appointed counsel on appeal has filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth the facts and procedural history, raising no specific issues, and requesting this court to conduct an independent review of the record. On March 24, 2010, we granted defendant an opportunity to file a supplemental brief. Defendant filed a supplemental brief on April 28, 2010.

Defendant's supplemental brief contains the following claims and allegations:

(1) he is not guilty of the charges but had to plead guilty to avoid a third strike conviction; (2) a police detective falsified a photograph in his case; (3) he was convicted of both receiving stolen property and theft in violation of section 496, subdivision (a);² (4) the trial court erroneously excluded defense evidence; (5) the prosecutor committed misconduct by not providing defendant with all discovery before or during trial; and (6) his counsel was ineffective because she failed to fully investigate the case to uncover exculpatory documentation.

“When a defendant pleads not guilty and is convicted as the result of a trial, in general any issue bearing on the determination of guilt and apparent from the record is cognizable on appeal. (See § 1237.) By contrast, when a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A

² We note that defendant's argument essentially misstates the rule. Under section 496, subdivision (a), a defendant cannot be convicted of receiving stolen property “and of the theft of the same property.” Here, the preliminary hearing transcript indicates a number of items of varying value were stolen from three different victims at three different locations, so there is nothing to indicate this provision of section 496, subdivision (a), would apply in defendant's case.

guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) In addition, “section 1237.5 authorizes an appeal [following a guilty plea] only as to a particular category of issues,” and to have these issues considered on appeal, a defendant must first take the additional procedural step of obtaining a certificate of probable cause.³ (*Id.* at p. 650.)

All of the issues raised in defendant’s notice of appeal and supplemental brief concern the determination of guilt or innocence or are not reviewable under section 1237.5. As set forth above, defendant requested a certificate of probable cause to appeal, but his request was denied by the trial court. “[W]here, as here, a certificate of probable cause has been denied, the appeal is not operative and the denial of the certificate must be reviewed by writ of mandate.” (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188.) Here, defendant did not challenge the denial by way of writ of mandate, so he is precluded from obtaining review on the merits of issues challenging the legality of the

³ Section 1237.5 states as follows: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

proceedings and/or the validity of his plea. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1096-1097.)

We have now concluded our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.